IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.243 OF 2006

Mahadev R. Sutar ..Petitioner.

Vs.

Tata Memorial Centre & Ors. ..Respondents.

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Mr. C.U. Singh, Senior Advocate with Ms. Shobha Gopal for the Petitioner.

Mr. S.K. Talsania, Senior Advocate with Mr. S.U. Uttam i/b Mulla & Mulla for the Respondents.

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CORAM: DR. D.Y. CHANDRACHUD, J.

10th October, 2006.

P.C. :

1. The Petitioner before the Court is the complainant in a complaint of unfair labour practices before the Industrial Court. A disciplinary enquiry was held against the Petitioner on a charge that he had given an interview to a newspaper containing statements which were alleged to be defamatory against the management of the First Respondent. The disciplinary enquiry culminated in a finding of misconduct and withholding of three increments with cumulative effect by the disciplinary authority. Against the punishment that was imposed on 6th April, 2001 the

Petitioner preferred an appeal which was dismissed by the Governing body on 23rd May, 2002. The Industrial Court dismissed the complaint on the ground that the Petitioner is not a workman and that the complaint was barred by limitation.

2. The Petitioner was employed with the First Respondent as a carpenter in the year 1977 and, at the material time he was holding the post of a Supervisor (Civil). The Industrial Court noted that the Petitioner had averred that "at present the complainant is working as Supervisor (Civil) in technical category in Civil Engineering Department". Now it is a well settled principle of law that in deciding as to whether an employee is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and therefore an employee within the meaning of Section 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, the nomenclature of the post is not conclusive. In the course of his evidence the Petitioner has stated that he was working in the technical category in the Civil Engineering Department; that he was discharging his day to day work in accordance with the instructions given by the Civil Engineer and no other workman was reporting to him. The Industrial Court

posed a question to the Petitioner in the course of cross examination as to whether he was required to do any manual work. The Petitioner answered the question in the negative. From this answer, the Industrial Court drew the inference that since the Petitioner was not doing any manual work it must follow that he was doing supervisory work. Though the Industrial Court noted that there was no concrete evidence to find that the Petitioner had any decision making power or that he was exercising managerial powers, the Court was of the view that the Petitioner had himself come with a case that he was working as a Supervisor in the Technical Department.

3. Counsel appearing on behalf of the Petitioner has submitted that (i) The Industrial Court has manifestly erred in placing undue weight on the designation attached to the post of the Petitioner; (ii) The case of the Petitioner was that the work of a carpenter was technical in nature and, therefore, fell within the scope and purview of Section 2(s) of the Industrial Disputes Act, 1947; (iii) Though a question was posed by the Industrial Court to the Petitioner on whether he was given any manual work to which he answered in the negative, this must be construed in the light of

the case of the Petitioner himself that he was doing work which was of a technical nature; (iv) The Industrial Court has erred in concluding merely on the basis of the observation that the Petitioner was not doing manual work, that the work which he was doing must be regarded as supervisory; (v) The Industrial Court has failed to consider important aspects of the evidence on record: most importantly, the admissions that were elucidated during the cross-examination of the Respondent's witness have been completely ignored; (vi) In view of the settled position in law the dominant nature of the work has to be considered and it is evident that the predominant nature of the work that was rendered by the Petitioner was technical and not supervisory; (vii) The self appraisal reports submitted by the Petitioner would also demonstrate that supervision was not the dominant nature of the work rendered and in any event, those reports must be considered together with all the other oral evidence; (viii) An adverse inference has to be drawn since the management admittedly failed to produce a duty list demonstrating the exact duties of the workmen; and (ix) The finding on limitation is ex-facie perverse. On the other hand, on behalf of the Respondent, it has been submitted that the self appraisal reports that were written by the Petitioner himself

would demonstrate that his work was that of a Supervisor. Counsel appearing on behalf of the Respondent supported the reasoning and the conclusions that were drawn by the Industrial Court by adverting to the admission of the Petitioner that he was not doing manual work.

4. There is merit in the submission which has been urged on behalf of the Petitioner that the Industrial Court ought to have considered the entirety of the evidence in assessing as to whether the predominant nature of the duties that were performed by the Petitioner were supervisory in character.

5. In **Vinayak Baburao Shinde v. S.R. Shinde**[1], a Division Bench of this Court has held that the word 'supervise' means to oversee, that is to look after the work done by other persons. The work of a supervisor is to ensure that the work is done in accordance with the norms laid down by the management and if it is not so done to assist the workman to do it correctly.

6. In the present case, the management had led the

1 1985 I CLR 318.

evidence of Mr. R. R. Rodrigues who was working as an Engineer in the Engineering/ Maintenance Department. In the course of his examination-in-chief the witness stated that the Petitioner was required to check reports from various departments of the hospital relating to maintenance/ repair work, assess the material that would be required for carrying out the work of repair, order supplies from the stores department and to give them to tradesmen and helpers with specific directions to do the work from day to day. In the course of his cross examination, the witness inter alia stated that while a duty list was provided to the complainant workman, he was unaware of whether the duty list was produced on the record. The witness admitted that carpentry work is technical work. The witness stated that he had no documentary evidence to show that several workers were working under the supervision of the Petitioner herein. The witness further admitted that there was absolutely no record showing that the complainant was placing orders for material from the stores department. Finally, the witness also admitted that while he used to call meetings of all the persons working in the Maintenance Department from the supervisory category, but the complainant workman was never called for such meetings. Evidently the material aspects of the evidence both of

the workman and of the witness for the management have not been considered by the Industrial Court.

7. Counsel appearing for the Petitioner placed reliance on self appraisal forms of the workman which formed a part of the confidential reports. From the cross examination of the workman, it would appear that he admitted certain documents produced with a list which was marked as Exh. C-7 and which documents were exhibited as Exhibits C-8 and C-9. The workman stated that Exh. C-9 was in his own handwriting. In the affidavit in reply that has been filed on behalf of the Respondent Exhibits 1, 2 and 3 are the self appraisal forms from the confidential reports of the Petitioner. Counsel appearing for the Respondent relied on the self appraisal forms to submit that the duties which the Petitioner has indicated therein include the distribution of work to tradesmen. At this stage it would be material to note that the Industrial Court has not considered even this aspect of the documentary evidence which has been relied upon by the Respondent in these proceedings. It is basically for the Industrial Court which is a primary fact finding body to determine as to whether the predominant nature of the duties of the Petitioner consisted of supervision or, as asserted on

behalf of the Petitioner, supervision was only an incidental part of his work. This has not been done. This Court is therefore seized of a case wherein important aspects of the evidence which have been relied upon by either side have not been even considered by the Industrial Court at all. In the exercise of the writ jurisdiction under Article 226, this Court would not be justified in reappreciating the evidence and arriving at a conclusion on the question as to whether the Petitioner is a workman in the manner of a fact finding authority. That is a task which must be performed by the Industrial Court.

8. Having regard to these circumstances, I am of the view that an order of remand is necessitated in the facts of this case to warrant a fresh decision by the Industrial Court.

9. In so far as the aspect of limitation is concerned, the Industrial Court was of the view that the complaint is barred by limitation. There is merit in the submission urged on behalf of the Petitioner that this aspect of the finding is manifestly erroneous. The disciplinary authority imposed a penalty of a stoppage of three increments upon the Petitioner by an order dated 6th April, 2001.

The Governing council which is the appellate authority dismissed the appeal on 23rd May, 2002 and the complaint before the Industrial Court was instituted on 12th June, 2002. The complaint was therefore instituted well within a period of one month of the date of passing of the order by the appellate authority. In these circumstances, it cannot be said that the complaint was barred by limitation.

10. In these circumstances, the impugned order dated 23rd December, 2005 is quashed and set aside and complaint (ULP) 615 of 2002 is restored to the file of the Industrial Court for fresh decision. However, while disposing of the Petition, it would be necessary to clarify that all the rights and contentions of the parties are kept open. The observations contained in this judgment (save and except on the question of limitation) are confined to elaborating as to how the Industrial Court has not considered material aspects of the evidence. These observations shall not be regarded as the expression of any opinion on the question as to whether the Petitioner is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. It will be open to the parties, should they be so advised, to apply before the Industrial Court for leading

additional evidence.

The Petition is accordingly disposed of. There shall be no order as to costs.